

**Before the
FEDERAL COMMUNICATIONS COMMISSION**

In the Matter of)	
)	
Petition of NextG Networks of)	WT Docket No. 12-37
California, Inc. for a Declaratory)	
Ruling that its Service is)	
Not Commercial Mobile Radio Service)	
)	

**REPLY COMMENTS IN SUPPORT OF
PETITION FOR DECLARATORY RULING**

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY	1
II.	NEXTG’S PROVISION OF TELECOMMUNICATIONS SERVICE TO ENTITIES WHICH IN TURN PROVIDE MOBILE SERVICES DOES NOT MAKE NEXTG’S SERVICE “MOBILE” OR “RADIO COMMUNICATION”	2
	A. NextG’s Showing that it Provides No Radio Communication Service Is Uncontradicted	2
	B. NextG’s Ownership of Antennae Does Not Amount to the Provision of Radio Communication or Otherwise Make NextG a Provider of CMRS	5
III.	THE KATRINA PANEL’S UNENACTED RECOMMENDATION THAT DAS ASSETS INCLUDE EMERGENCY BACKUP POWER HAS NO RELEVANCE TO THE REGULATORY STATUS OF NEXTG’S SERVICE	7
IV.	NEXTG’S REGULATORY STATUS AS A TELECOMMUNICATIONS SERVICE PROVIDER IS UNAFFECTED BY EXTRA-STATUTORY MATERIAL ON WHICH SCOTTSDALE RELIES	9
V.	CONCLUSION.....	15

NextG Networks of California, Inc. (“NextG”)¹ submits these Reply Comments in support of the Petition for Declaratory Ruling filed December 11, 2011 (“Petition”) in this matter.

I. INTRODUCTION AND SUMMARY

NextG’s Petition asked the Commission to declare that the telecommunications service it provides via distributed antenna systems (“DAS”) and other “Small-cell Solutions” as defined in the Petition (“NextG’s Service”) is not Commercial Mobile Radio Service (“CMRS”) and that NextG does not provide CMRS, as defined by the Communications Act (“Act”) and the Commission’s rules. NextG’s Petition demonstrated in detail, through the declaration of its Chief Technology Officer and co-founder, David Cutrer, how the network facilities in NextG’s DAS system architecture provide telecommunications services but not radio communication of any kind.

These reply comments respond to certain factual and legal inaccuracies advanced in the Comments of the City of Scottsdale (“City” or “Scottsdale”). The City’s comments sidestep NextG’s plain showing and instead emphasize the presence of antennae in NextG’s nodes, as if that element alone answers the question of the regulatory status of NextG’s Service. It does not. Instead, the careful application of the dispositive definitions of “radio communication,” “wireline communication,” and other terms required by the Act and the Commission’s rules demonstrate (i) that NextG provides telecommunications service to wireless carriers and (ii) that NextG’s

¹ On April 10, 2012, NextG Networks, Inc. (“NextG Networks”), the parent of NextG Networks of California, Inc., merged with Crown Castle NG Acquisitions Corp., a wholly-owned indirect subsidiary of Crown Castle International Corp. NextG Networks, whose name changed effective May 3, 2012 to Crown Castle NG Networks Inc., continued as the surviving corporation and its subsidiary, Crown Castle NG West Inc. (formerly known as NextG Networks of California, Inc.), continues to operate in Arizona. For ease of reference, these Reply comments will continue to reference “NextG” as the Petitioning party.

Service is not CMRS or any other form of radio communication. As NextG's Petition explained, this was the conclusion of the Arizona Corporation Commission and numerous other state agencies that have considered NextG's status for purposes of state telecommunications service provider authorization.

The City spends approximately half of its Comments in a failed attempt to prove some regulatory relevance to the marketing terminology used by NextG and others in the industry, such as "dark fiber," "backhaul," and NextG's "RF Transport" service. Scottsdale fails in its effort to draw meaning out of these terms used by NextG employees and in marketing materials. Regardless, NextG's use of industry shorthand for various services, and NextG's marketing practices, are incapable of changing the regulatory status of a service for purposes of the Act. Likewise, the City challenges well-established Commission and court precedent, as well as the findings and decisions of 8 states' public utilities commissions, including the Arizona Corporations Commission, when it inaccurately claims that because NextG provides service to other carriers it is not providing service to the public and is not providing telecommunications service.

NextG's Petition should therefore be granted.

II. NEXTG'S PROVISION OF TELECOMMUNICATIONS SERVICE TO ENTITIES WHICH IN TURN PROVIDE MOBILE SERVICES DOES NOT MAKE NEXTG'S SERVICE "MOBILE" OR "RADIO COMMUNICATION"

A. NextG's Showing that it Provides No Radio Communication Service Is Uncontradicted.

The Petition asks the Commission to declare that NextG's Service is not CMRS as defined by the Act and the Commission's rules.² In support, NextG provided the detailed affidavit of David Cutrer to demonstrate its network architecture and to explain the way NextG's

² Petition at 1.

Service works. In response, Scottsdale and San Antonio attempt to wrest various words and concepts free from their given context to support arguments that NextG's Service somehow falls within the definition of CMRS or otherwise fails to meet the definition of "telecommunications service," but the cities offer nothing to contradict Mr. Cutrer's unequivocal and factually un rebutted explanation that NextG does not provide any radio communication service.

Mr. Cutrer explained in his Declaration that NextG provides "transport of NextG's customers' communications (both voice and data) between points designated by the customer without alteration of the communications," and that the service is handed from the customer to NextG "at fixed points" from which NextG transports the voice and data over fiber optic facilities.³ Mr. Cutrer unequivocally stated that "[t]he carrier customer's Base Station equipment includes radio equipment that ultimately controls the radio frequency transmission," and that "NextG does not transmit or receive wireless, RF transmission over the air, and NextG does not have any radios in its service or facilities."⁴ In fact, he explained, "all radio transmissions and wireless service are controlled and provided by NextG's carrier customers through the carrier customer's equipment located at the Base Station."⁵ The same is true in both directions of communication: "NextG does not provide or control radio transmissions between the Node and a carrier customer's subscriber's mobile device."⁶

Indeed, Mr. Cutrer expounded on the details of NextG's Service and architecture and eliminated any potential ambiguity about the nature of NextG's Service in a deposition

³ Cutrer Dec. at 2 ¶ 7.

⁴ *Id.* at 3 ¶ 8.

⁵ *Id.* (emphasis added).

⁶ *Id.* at 3 – 4 ¶ 9.

conducted by Scottsdale in the court litigation that led to this proceeding. For example, Mr.

Cutrer testified to the City's counsel:

Q. Does NextG have equipment that it uses in the Chicago deal with Verizon that converts a radio frequency signal to an optic signal?

A. No. That's what the carrier base station does.

* * *

Q. Does the radio frequency signal get converted to a fiberoptic signal before or after that first demarcation point in the antenna?

A. After.

Q. At the point of hand-off or demarcation at the antenna it still remains a radio frequency signal; is that correct?

A. Yes. However, what happens with the antenna is it goes from being a free space radio signal, something propagating through the air, to an electrical radio frequency signal, something that can be transported over cables or fiber.

Q. Okay. At the demarcation point is it still a radio frequency in free space or is it a radio frequency electrical signal?

A. Well, on one side it's free space, and on the other side it's electrical. That's why it's a demarcation point.

* * *

Q. And how does the RF signal that's received by the Verizon antenna get changed to an optical signal for transport by NextG?

A. That's done by the carrier base station.

Q. And is that equipment, to your knowledge, that's used by the carrier base station to convert from RF electrical to RF optical, is that similar equipment to the remote unit that you've talked about for NextG service?

A. No.

Q. What's different about that equipment?

A. Okay. The base station not only generates and receives the RF signals but is responsible for generating the content that goes over those signals, handing mobile users

off to other cell sites, telling mobiles to power up or power down. So all the kind of network intelligence as it relates to the mobile signals is in the base station whereas the remote unit is strictly a conversion device.⁷

Mr. Cutrer thus repeatedly explained that any radio communication is *generated* and *controlled* entirely by the wireless carrier through its base station, not by NextG. Other passages elaborate similarly on the exact details of NextG's Service, leaving no room to doubt the clarity of Mr. Cutrer's testimony about NextG's Service and architecture. Mr. Cutrer's fundamental description of NextG's Service as a telecommunications service that has no element of CMRS is uncontroverted.

B. NextG's Ownership of Antennae Does Not Amount to the Provision of Radio Communication or Otherwise Make NextG a Provider of CMRS.

Scottsdale's Comments never address Mr. Cutrer's unqualified assertions that NextG does not transmit or receive wireless RF transmission, that *it has no radios in its service* or facilities, and that all such radio transmissions and wireless services are generated, controlled and provided by NextG's wireless carrier customers through *their* equipment. Instead, Scottsdale emphasizes a fundamentally mistaken premise that NextG must be providing "radio communications" because "[i]t seems axiomatic that having an antenna which functions to transmit and receive RF signals to and from mobile telephone customers as part of a system is a mobile service."⁸ The City of San Antonio likewise suggests that because NextG owns some of the antennae used by its wireless carrier customers then NextG's service is somehow transformed into a wireless service.⁹ The argument is a fallacy: the network facilities NextG

⁷ Deposition of David Cutrer, Exhibit 1 hereto at pp. 13, 26, 42.

⁸ Scottsdale Comments at 12.

⁹ Comments of the City of San Antonio, Texas ("San Antonio Comments") at 3 – 4.

might own does not define the service it provides for purposes of the Act and the Commission's rules.

NextG's mere ownership and physical maintenance of antennae capable of transmitting radio communications, which have no radio transmission until a third party provides them, does not satisfy the definition of "radio communication." Without the radio frequency signal, which is generated and controlled by NextG's wireless carrier customers, the antennae are no more capable of providing service than they would be boxed up in a warehouse. To be a provider of "radio communication" requires, at minimum, "the transmission by radio" of content.¹⁰ Mr. Cutrer's description makes clear in several ways that NextG does not generate or transmit any radio signals and, instead, only converts and carries optical signals handed off from wireless carriers who in turn generate and control all aspects of any radio communications. NextG has no radios in its service or facilities.

In addition, NextG's ownership of antennae does not fulfill the statutory requirement that CMRS be "carried on between mobile stations . . . and land stations, and by mobile stations communicating among themselves." 47 U.S.C. §153(28). Scottsdale and San Antonio argue that NextG's mere ownership of these devices constitutes provision of mobile service. Again, NextG's Service is engineered to provide the functional equivalent of backhaul from nodes to hubs, neither of which constitute a "mobile stations."¹¹

NextG provides an innovative segment of telecommunications architecture that through its fiber transport service provides unique value to wireless carriers and allows wireless carriers to reach areas that are difficult or impossible for them to serve using conventional towers and roof-mounted antennae. No commenter has provided any proof that contradicts Mr. Cutrer's

¹⁰ 47 U.S.C. § 153(27).

¹¹ See Petition at 11 – 12.

explanation of NextG's Service. The company provides no "radio communication" and no CMRS.

III. THE KATRINA PANEL'S UNENACTED RECOMMENDATION THAT DAS ASSETS INCLUDE EMERGENCY BACKUP POWER HAS NO RELEVANCE TO THE REGULATORY STATUS OF NEXTG'S SERVICE.

Scottsdale's assertion that the Commission "has already concluded that there is no reason to distinguish DAS from traditional wireless carriers" is also inaccurate. The City quotes a special panel, which, in reviewing the impact of Hurricane Katrina ("Katrina Panel") on communications networks, recommended that DAS node assets be subject to the emergency backup power rule.¹² The Katrina Panel recommendation that DAS nodes have backup power supplies never purported to determine whether NextG's Service is "radio communication" or CMRS, or whether it fit within any regulatory status. Instead, in recommending that DAS nodes not be exempt from battery backup power requirements, the Katrina Panel simply intended that DAS nodes should "be treated similarly to other types of *assets* that are subject to the rule."¹³ As adopted by the FCC, the backup power rules applied to "assets" owned by ILECS, CLEC, and CMRS providers. The FCC did not hold that a DAS provider is providing wireless service. Ultimately, the backup power rules were rejected by the Office of Management and Budget on the basis that the FCC did not seek appropriate public comment.¹⁴

¹² Scottsdale Comments at 7.

¹³ *In re: Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 18013-31, 2007 WL 2903938 (emphasis added).

¹⁴ Notice of Office of Management and Budget Action ("OMB") (Nov. 28, 2008) (disproving the rule on the basis that the FCC did not conduct appropriate public comment on the proposed rule)(attached hereto as Exhibit 1).

Scottsdale likewise misrepresents the testimony of NextG's Mr. Cutrer in arguing that NextG's Service is the functional equivalent of CMRS within the meaning of the Act.¹⁵ Mr. Cutrer simply agreed (in response to a confusing question) that there is not "anything different about the way [wireless customers] will use their phone" whether the wireless carrier's network incorporates a backhaul service or NextG's Service.¹⁶ Of course NextG's business depends on its ability to provide its service to wireless carriers in a manner that does not disrupt the end users' ability to use their wireless devices. Those same end users should have no different experience whether their calls and data are transported from the receive antennae via copper wires, microwave (radio) or fiber (wireline) technology, or by one or more different companies using those different technologies in concert for backhaul and last mile connectivity. The argument does not address the careful definitions of "radio communication," "mobile station," or "land station" on which CMRS status rests. Nor can the argument be reconciled with the totality of Mr. Cutrer's detailed statements in the declaration he submitted in this proceeding and his deposition in the state court action, as detailed above.

In the same vein, the City oversimplifies NextG's Service in arguing that NextG's remote nodes "may really just be signal boosters for its CMRS customers," citing an FCC notice for public comment that defines signal boosters *for the purposes of that Public Notice* to include DAS.¹⁷ The City does not explain how this should lead the Commission to determine NextG's Service (as defined in the Petition) is CMRS, much less offer any logical reason for doing so within the confines of the Act. Again, the mere fact that a DAS network provides transport

¹⁵ Scottsdale Comments at 8 - 9.

¹⁶ *Id.* at 8.

¹⁷ Scottsdale Comments at 8 n. 7 (citing and quoting Public Notice, *FCC Wireless Telecommunications Bureau Seeks Comment on Petitions Regarding the Use of Signal Boosters and Other Signal Amplification Techniques Used with Wireless Services*, WT Docket No. 10-4 (rel. Jan. 6, 2010)).

service to or among wireless equipment, and as such involves wireless equipment, does not convert the DAS network operator into a wireless carrier itself. Fundamentally, all wireless networks are supported or served by various wireline transport services (*e.g.* “backhaul”) that are provided by ILECs and other wireline CLECs such as NextG. If merely connecting with or providing service to a wireless equipment location converted that provider into a wireless provider, nearly the entire telecommunications industry could be considered “wireless.” Consequently, the City’s use of such far-removed citations to support its theory is unpersuasive and misunderstands the complex telecommunications ecosystem.

IV. NEXTG’S REGULATORY STATUS AS A TELECOMMUNICATIONS SERVICE PROVIDER IS UNAFFECTED BY EXTRA-STATUTORY MATERIAL ON WHICH SCOTTSDALE RELIES.

Scottsdale’s arguments inaccurately characterize NextG as a CMRS provider based on NextG marketing materials and deposition testimony of employees taken out of context. None of these sources, even if they were accurately portrayed, could change NextG’s regulatory status, which stems from the careful application of definitions required by the Act and the Commission’s rules.

For example, Scottsdale makes much of NextG’s marketing materials, where it informs wireless carriers that using NextG’s Service and DAS facilities could help them “enhance wireless performance” and achieve “better mobile coverage.”¹⁸ Of course, these excerpts of NextG’s advertising say nothing about the details of what services NextG provides and where. And while the point of NextG’s marketing is to explain the value NextG’s Services and facilities add to existing wireless networks, it says nothing relevant to the regulatory status of NextG’s Service. Ultimately, those statements are entirely consistent with the very detailed and careful

¹⁸ Scottsdale Comments at 5.

descriptions of NextG's Services and facilities provided by Mr. Cutrer, as described above, which demonstrate that NextG's Service is not "radio communication" and is not CMRS.

Scottsdale unequivocally states that "NextG changed the way it described its service" allegedly in response to Scottsdale's filings in state court.¹⁹ It also alludes to this argument throughout its comments.²⁰ This assertion has no support when Mr. Cutrer's declaration and deposition, each available to the City, are read with a modicum of care for the technical nature of the subject matter. The City's effort to find some ephemeral ambiguity and declare it contradictory fails in this light, as does the City of San Antonio's effort to build on the false contradiction for its own argument.²¹

San Antonio likewise gives undue weight to NextG's marketing description that it "sends control signals to the remote SCS [Small-Cell Solution] system to adjust parameters" and otherwise maintains its DAS network, suggesting that this raises serious questions about the nature of NextG's Service.²² San Antonio is uninformed. As Mr. Cutrer's deposition in the pending litigation demonstrates, the remote SCS unit "is a NextG term" for the device that "converts electrical RF to the optical carrier."²³ Adjusting the parameters of NextG's remote unit that converts signals for transport does not equate to the transmission of radio communications or otherwise make NextG's service qualify as CMRS.

¹⁹ Scottsdale Comments at 9.

²⁰ Scottsdale Comments at 2 ("changes on a regular basis"); 3; 12 (NextG's change in the description of its service"); 14 ("new description" of services); 16 (same).

²¹ San Antonio Comments at 3-4. San Antonio uses the same technique to ascribe unfounded meaning to a letter from NextG's counsel to this Commission describing generally the benefits of DAS to the wireless ecosystem. *Id.* at 5-6. That correspondence had no relevance to a careful analysis of the regulatory status of NextG's Service.

²² San Antonio Comments at 5 – 6.

²³ Cutrer Dep. at 40.

Scottsdale extends the selective excerpt device by ascribing unsupportable meaning to select passages from the statements of NextG employees. For example, Scottsdale relies on one phrase from a declaration provided in a different proceeding by Joseph Milone, a NextG government affairs employee.²⁴ Scottsdale omits, however, Mr. Milone's declaration submitted in the Arizona state court proceeding explaining that "to the extent my declaration in the *Carlsbad* case is ambiguous, . . . NextG does not transmit or control radio frequencies. . . does not provide wireless service and does not provide or control wireless transmissions."²⁵ Mr. Milone never purports to be an engineer or lawyer, and more important, in a deposition taken by Scottsdale, he explained that a better understanding of the technical details would be available from Mr. Cutrer.²⁶ Mr. Milone's loose description of the function of the antennae in NextG's facilities does nothing to undermine the detailed and repeated description of NextG's Service provided by Mr. Cutrer, the expert in charge of the company's technology.

Scottsdale devotes almost half of its Comments to parsing statements of Mr. Cutrer and two other NextG employees to argue that NextG does not provide telecommunications service.²⁷ Mr. Cutrer's repeated and clear statements, detailed above, leave no doubt that NextG does not provide "radio communications" or CMRS. His declaration and testimony also, however, leave no doubt that the service NextG provides is a "telecommunications service" within the meaning of the Act. Mr. Cutrer's declaration unequivocally declares that NextG's Service "consists of providing transport of NextG's customers' communications (both voice and data) between points

²⁴ Scottsdale Comments at 5 – 6.

²⁵ Exhibit 2 attached hereto.

²⁶ See Exhibit 3 attached hereto, excerpts of Milone Dep. at 6 - 10 (education and experience lack any engineering or legal training); 11 (Milone explaining his lack of understanding of any distinction between the industry terms "RF Transport" and "backhaul", and referring the City to Mr. Cutrer); 27 (no legal training).

²⁷ Scottsdale Comments at 9 – 17.

designated by the customer without alteration of the communications,” with additional detail.²⁸

In his deposition, Mr. Cutrer testified, for example:

Our primary service is that we provide RF transport to the wireless carriers that service – transport signals from a carrier base station to a location in the right of way. We also provide backhaul services as a separate product.

* * * *

And in the case of Pima County, we have the NextG nodes providing, you know, in a certain geographic area, and so those nodes -- the radio frequencies that it propagates is received by the NextG antenna, is converted by the equipment on the pole to a fiber signal, converted to a fiberoptic media, and that fiber media is used to transport the RF signal back to what we call the base station hotel, which is a piece of real estate where the fiber comes into and it's connected to what we call some hub equipment, which converts the signal back to a radio frequency signal, and then that radio frequency signal is connected to the AT&T base station, which receives those signals, processes them, and ultimately interfaces and switches them or backhauls them back to their switch location where they get back to the PSTN.²⁹

There is no room in Mr. Cutrer’s statements, read in context, from which to conclude anything but that NextG is a provider of telecommunications service via wireline communications, and not a provider of CMRS via radio communications.

Scottsdale seems to argue that because NextG does not generate radio communications through the antennae in its DAS system, then it “does not appear to provide telecommunications services at all, especially not with respect to its incorporation of antennas.”³⁰ It is difficult to understand this *non-sequitur*, but Scottsdale’s use of carefully excised statements from NextG’s Director of Implementation, Carl Cabico, and then-General Counsel, Robert Delsman, is misleading and misplaced. Their statements, read in context, complement and do not contradict Mr. Cutrer’s declaration and deposition testimony about the nature of NextG’s Service.

²⁸ Cutrer Dec. at 2 – 3 ¶¶ 7 -8.

²⁹ Cutrer Depo. at 9, 23.

³⁰ Scottsdale Comments at 14 – 16.

Ultimately, Section II of Scottsdale's Comments attempts to use industry terminology for various aspects of NextG's telecommunications services in a failed attempt to confuse the simple issue presented by NextG's Petition. What Scottsdale refers to as "NextG's New Description" of services is nothing more than a more detailed examination of the ways NextG and other telecommunications service providers may market or discuss various services, such as "dark fiber," "backhaul," and "RF Transport." None of these, of course, is a term from the Act or the Commission's rules. Moreover, dark fiber, "backhaul," Ethernet, or other services are not the NextG's Services provided via NextG's DAS networks in Arizona that are at issue in this Petition.³¹

NextG's Petition does not seek declaratory relief as to traditional dark fiber or backhaul services, which have long been provided in the industry. Instead, NextG's Petition seeks a determination that its service, marketed as RF Transport and described in detail by Mr. Cutrer's declaration in this proceeding, is *not* "radio communication" within the meaning of the Act and therefore not CMRS. Whether NextG provides services commonly known as dark fiber or backhaul in other circumstances is simply not at issue, regardless of whether the City was allowed to inquire as to them in deposition.

Finally, Scottsdale's argument that NextG is not a common carrier, built upon the above fallacies, is wrong and warrants a brief response. The City asserts that because NextG is a "carrier's carrier" that enters into individual case basis ("ICB") contracts, it is not providing

³¹ See, e.g., Exhibit 1, Cutrer Dep. at 9 - 10 (distinguishing between RF Transport, the subject of NextG's Petition, and backhaul); 15 - 16 (same); 17 - 18 (NextG's Service in Arizona is RF Transport, not backhaul); 35 - 36 (differentiating NextG's backhaul service in Chicago from its RF Transport in Arizona); 41- 43 (same); 51 - 53 (discussing backhaul, Ethernet, and dark fiber as separate from RF Transport).

service to the public and therefore is not providing telecommunications service.³² Yet, it is well-established that the Act's definitions do not require the provider to serve the entire universe of consumers. Indeed, wholesale service to a limited universe of other carriers who then provide retail service clearly qualifies. For example, in analyzing the phrase "to the public," as used in the Act, the United States Court of Appeals for the District of Columbia Circuit explained over 30 years ago:

This does not mean that the particular services offered must practically be available to the entire public; *a specialized carrier whose service is of possible use to only a fraction of the population may nonetheless be a common carrier if he holds himself out to service indifferently all potential users.*³³

All that is required is for a carrier to serve "indiscriminately ... the clientele [it is] ... suited to serve."³⁴

Scottsdale's citation to *Virgin Islands Tel. Corp. v. FCC*, 198 F.3d 921 (D.C. Cir. 1999), for the proposition that "'carrier's carriers' are not 'common carriers'" is inaccurate. *Virgin Islands* has been distinguished repeatedly, and the Commission has specifically rejected the argument advanced by the City that the *Virgin Islands* decision means that carrier's carrier or "wholesale" services are not within the definition of telecommunications service. As the Wireline Competition Bureau explained:

³² Scottsdale Comments at 16-17.

³³ *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 533 F.2d 601, 608-09 (D.C. Cir. 1976) (emphasis added); see also e.g., *Southwest Transmission Coop.*, 213 Ariz. 427, 431, 142 P.3d 1240, 1244 (App. 2006) ("[W]e reject [the cooperative's] contention that Article 15, Section 2, requires an immediate end use by a consumer").

³⁴ *Consolidated Comm Of Fort Bend Co v Public Util. Comm'n of Texas*, 497 F Supp 2d 836, 843 (W.D. Tex 2007), *aff'g* *Petition of Sprint Comm Co LP*, 2006 WL 2366391 (Tex. PUC, Aug 14, 2006) (quoting *National Ass'n of Regulatory Util. Comm'rs v. FCC*, 525 F.2d 630, 641 (D.C. Cir. 1976)).

In *Virgin Islands*, the D.C. Circuit stressed that the Commission did not rely on a wholesale-retail distinction, stating that “the focus of its analysis is on whether AT&T-SSI offered its services indiscriminately in a way that made it a common carrier . . . and the fact that AT&T-SSI could be characterized as a wholesaler was never dispositive.”³⁵

Unlike the provider in *Virgin Islands*, NextG holds itself out to the relevant universe of the public that would potentially use its service. As the Arizona Corporation Commission and numerous other state commissions have necessarily found when they granted NextG relevant state certificates of authority, NextG provides a telecommunications service that is not CMRS (which would be outside their jurisdiction). The City’s assertion to the contrary is based on an erroneous view of the law and facts.

V. CONCLUSION

For the foregoing reasons, NextG respectfully requests that the Commission issue a Declaratory Ruling that NextG’s Service is not Commercial Mobile Radio Service.

³⁵ *Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Red. 3513, ¶ 12 (Wir. Comp. Bur. 2007); see also, *Iowa Telecommunications services v Iowa Util Board*, 563 f.3d 743 (8th 2009) (holding that individual pricing and ICB contracts do not alter status as telecommunications service and distinguishing *Virgin Islands*); *Consolidated Communications of Ft. Bend*, 497 F Supp. 2d at 843 (same).

Respectfully submitted,



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May 14, 2012

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EXHIBIT 1

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

NEXTG NETWORKS OF CALIFORNIA,)
INC., d/b/a NEXTG NETWORKS)
WEST,)

Plaintiffs,)

vs.)

No. CV2010-000832

CITY OF SCOTTSDALE,)

Defendant.)

DEPOSITION OF DAVID MARCEL CUTRER

Scottsdale, Arizona
September 22, 2011
11:12 a. m.

PREPARED FOR:

SUPERIOR COURT
(Original)

REPORTED BY:

AZ Litigation Support, LLC
Susan A. Grenz, RPR
Certified Court Reporter
Certificate No. 50720

AZ LITIGATION SUPPORT (480) 481-0649

1 Q. Other than NextG Networks, do you have any work
2 experience in the telecommunications industry?

3 A. Yes.

4 Q. Where else did you work in the telecommunications
5 industry?

6 A. Prior to NextG, I was with a company called LGC
7 Wireless.

8 Q. What were your job duties at LGC Wireless?

9 A. I was one of the founders of the company. I was
10 the vice president of engineering for a number of years and
11 also the chief technology officer for several years.

12 Q. Is LGC Wireless still in existence, to your
13 knowledge?

14 A. Yes. Not as an independent company so -- LGC was
15 acquired in 2007.

16 Q. Do you know who acquired LGC?

17 A. Yes.

18 Q. Who is that?

19 A. ADC Telecommunications, and a year ago ADC was
20 acquired by a company called Tyco.

21 Q. As chief technology officer for NextG, is it fair
22 to assume that you are familiar with the services that NextG
23 provides to customers?

24 A. Yes.

25 Q. What is your understanding of the general nature

1 of the services NextG provides?

2 A. Our primary service is that we provide RF
3 transport to the wireless carriers that service -- transport
4 signals from a carrier base station to a location in the
5 right of way. We also provide backhaul services as a
6 separate product.

7 Q. Do you draw a distinction between transport
8 services and backhaul services?

9 A. I draw a distinction between RF transport and
10 backhaul.

11 Q. What are the distinguishing characteristics
12 between RF transport and backhaul service?

13 A. A backhaul service is transport between a carrier
14 base station and their switch location.

15 RF transport is transport between a carrier base
16 station and where the signal is radiated to mobile users.

17 Q. Who, if any, company are you aware that NextG
18 provides strictly backhaul services to?

19 MR. THOMPSON: Objection. Form.

20 A. Can you clarify? Are you looking for an example?

21 BY MR. ANDERSON:

22 Q. If anyone that you're aware of.

23 A. Verizon.

24 Q. What location or locations in the country does
25 NextG provide backhaul services to Verizon?

1 A. Chicago.

2 Q. Are there antennas involved in that service?

3 A. No.

4 Q. Is that service strictly fiberoptic-based
5 service?

6 A. Yes.

7 Q. Is the fiberoptic-based service hooked up to any
8 antennas that Verizon has?

9 MR. THOMPSON: Object to form.

10 A. No.

11 MR. THOMPSON: Just give me a split second to
12 state an objection to the form of the question, and you'll
13 just answer unless I tell you otherwise. You answered, and
14 I think you said, "No."

15 THE WITNESS: I said, "No."

16 BY MR. ANDERSON:

17 Q. What is your understanding of the service that --
18 backhaul service that NextG provides to Verizon in Chicago?

19 A. It's the same as I described. So we connect our
20 fiber to their base station equipment back to a switch
21 location.

22 Q. And what is the definition of switch location?

23 A. Probably the best way to explain it is it's the
24 point at which in the carrier's network they connect their
25 signals to the broader either PSTN or internet connections.

1 Q. And when you use the term "PSTN," are you using
2 that as an acronym for public switch telephone network?

3 A. Yes.

4 Q. So if I understand correctly, the backhaul
5 service that NextG provides to Verizon in Chicago is
6 ultimately interconnected with the public switch telephone
7 network?

8 MR. THOMPSON: Object to form.

9 A. Ultimately, but that's not the service we
10 provide. So we're providing the transport from the base
11 station to the switch.

12 BY MR. ANDERSON:

13 Q. And what is the base station in the context of
14 the service provided in Chicago?

15 A. Meaning what is a base station?

16 Q. Right.

17 A. It is a piece of equipment that our customers use
18 that takes information, data, and puts it into a signal
19 format that can be radiated to mobile subscribers.

20 Q. In the case of the Chicago example, is the base
21 station owned by Verizon?

22 A. I believe so.

23 Q. And that base station that is owned by Verizon,
24 does that have an antenna as part of its makeup?

25 MR. THOMPSON: Objection. Asked and answered.

1 A. I believe so.

2 BY MR. ANDERSON:

3 Q. Is my understanding correct that NextG doesn't
4 have any ownership of that base station as far as the
5 Chicago network?

6 A. Correct.

7 Q. Do you know who is responsible for transmitting
8 and receiving the RF signals at that base station in
9 Chicago?

10 A. I believe it's Verizon.

11 Q. What type of telecommunication signal does NextG
12 transport in Chicago for Verizon?

13 MR. THOMPSON: Object to form.

14 A. Can you clarify the question?

15 BY MR. ANDERSON:

16 Q. Sure. In terms of is NextG transporting a
17 fiberoptic signal or a radio frequency signal?

18 A. A fiber signal.

19 Q. So in that situation, that's -- strike that.

20 You identified that as a backhaul service; is
21 that correct?

22 A. Correct.

23 Q. And in that situation, Verizon has a base
24 station; is that correct?

25 A. Correct.

1 Q. And then NextG has equipment that converts the
2 radio frequency signal to a fiberoptic signal; is that
3 correct?

4 A. Ask that again.

5 Q. Does NextG have equipment that it uses in the
6 Chicago deal with Verizon that converts a radio frequency
7 signal to an optic signal?

8 A. No. That's what the carrier base station does.

9 Q. In what format in terms of RF or optical does
10 NextG receive the signal from Verizon?

11 MR. THOMPSON: Object to form.

12 A. It's not an RF signal that we receive.

13 BY MR. ANDERSON:

14 Q. It's already converted to an optic signal?

15 A. Correct.

16 Q. When Next G receives the signal, where is the
17 signal transported to?

18 A. Well, if you're -- it's bi-directional. If
19 you're at the base station, it gets transported to the
20 switch. If you're at the switch, it gets transported to the
21 base station.

22 Q. Okay. And the switch, is that equipment owned by
23 NextG or Verizon?

24 A. Verizon.

25 Q. And at the switch -- if a signal is transported

1 from the base station to the switch, is it converted to a
2 different type of signal when it reaches the switch?

3 A. Not by NextG.

4 Q. To your knowledge, is it converted to a different
5 type of signal by Verizon or some other provider?

6 A. Well, yes. The function of the switch is to take
7 those signals and process them and convert them into signals
8 that can interface with the PSTN or other telecom services.

9 Q. But in the case of the Chicago agreement with
10 Verizon, NextG doesn't convert any signals; is that correct?

11 A. Correct.

12 Q. So is my understanding correct that in the
13 Chicago deal with Verizon, the sole function of NextG is
14 fiberoptic cable from one point to another?

15 A. Primarily.

16 Q. Are there any other functions that NextG does in
17 its agreement with Verizon in Chicago?

18 A. No.

19 Q. I have seen a reference in some filings to
20 something called a point to-point service. Are you familiar
21 with that?

22 A. Generally.

23 Q. Is what we just described about NextG's service
24 provided to Verizon in Chicago considered a point-to-point
25 service?

1 MR. THOMPSON: Object to form.

2 A. I would say so.

3 BY MR. ANDERSON:

4 Q. Are you aware of any other types of services that
5 would come under the classification of point-to-point
6 service?

7 A. There are many, yes.

8 Q. Does NextG offer any other type of service that
9 would fall under the classification of point-to-point
10 service?

11 MR. THOMPSON: Object to form.

12 A. I haven't thought about it.

13 BY MR. ANDERSON:

14 Q. NextG offers distributed antenna systems as part
15 of a service it offers; is that correct?

16 A. Well, distributed antenna system is a generic
17 name for a certain kind of architecture. The service that
18 we offer is what we call an RF transport service.

19 Q. In terms of backhaul service, are you familiar
20 with that term?

21 MR. THOMPSON: Objection to form.

22 A. Yes.

23 BY MR. ANDERSON:

24 Q. What is your understanding of the term "backhaul
25 service"?

1 MR. THOMPSON: Objection to form. I think you
2 literally asked him that about ten minutes ago.

3 But you can answer it.

4 A. The same question. That's the service that
5 transports service from a base station to a switch.

6 BY MR. ANDERSON:

7 Q. I apologize if I asked you that before. I just
8 want to clarify if there's any distinction between a
9 backhaul service and a point-to-point service.

10 MR. THOMPSON: Objection to form.

11 A. Is that a question?

12 BY MR. ANDERSON:

13 Q. Yes. Let me rephrase it.

14 Do you draw any distinction between a backhaul
15 service and a point-to-point service?

16 A. From my perspective, a backhaul service is what I
17 just described. A point-to-point service is a very generic
18 term that would apply to many kinds of services.

19 Q. Okay.

20 A. I wouldn't use that term, but you asked, so --

21 Q. Just so I'm understanding and we're on the same
22 page, you would characterize the service that NextG offers
23 to Verizon in Chicago as a backhaul service?

24 A. Yes.

25 Q. Are there any other locations in the country that

1 you're aware of where NextG provides what you would term as
2 a backhaul service?

3 A. We have -- not operational.

4 Q. Is there something that you have in the works?

5 A. We have some other deals in the works.

6 Q. Do you have any potential deals in the works for
7 the State of Arizona to provide backhaul service?

8 A. Not to my knowledge.

9 Q. The base station that you referred to as Verizon
10 having in Chicago that NextG hooks up its fiberoptic to, is
11 that the same thing as a macro cell?

12 MR. THOMPSON: Object to form.

13 A. Yes.

14 BY MR. ANDERSON:

15 Q. Does NextG's DAS service utilize any macro cells?

16 A. Can you clarify the question?

17 Q. Sure. Let me back up for a minute.

18 We've referred to something called a distributed
19 antenna system. Agreed?

20 A. Agreed.

21 Q. And you've indicated, I think, that distributed
22 antenna system is kind of a generic term; is that correct?

23 A. Correct.

24 Q. Is there an industry technical term that you
25 would subscribe to the service that NextG is currently

1 offering in the state of Arizona?

2 MR. THOMPSON: Object to form.

3 A. We refer to it as an RF transport service.

4 BY MR. ANDERSON:

5 Q. Okay. In technical terms, do you draw a
6 distinction between transport service and transmission
7 service?

8 MR. THOMPSON: Object to form.

9 A. They are generic terms, so I haven't thought
10 about it.

11 BY MR. ANDERSON:

12 Q. So to your knowledge and your technical expertise
13 related to this, are "transport" and "transmission"
14 interchangeable terms?

15 A. I think it depends on the situation.

16 Q. Let's talk about Pima County.

17 Are you familiar with the system down there?
18 Strike that.

19 Pima County, Arizona, do you have any knowledge
20 if NextG has any services in that county?

21 A. Yes.

22 Q. What is your understanding of the services that
23 NextG provides in Pima County?

24 A. We provide an RF transport service from carrier
25 base stations to multiple load sites.

1 Q. And what is the equipment associated with the
2 carrier base station?

3 A. Can you clarify the question?

4 Q. Sure. You referred to a carrier base station,
5 correct, and you -- that's something owned by a carrier; is
6 that correct?

7 A. Right.

8 Q. And is that Verizon down in Pima County or is
9 that AT&T or Cricket or --

10 A. The customer we have on that network currently is
11 AT&T.

12 Q. You've referred to a base station. Is that
13 something that's owned by AT&T?

14 A. Correct.

15 Q. Now, previously when we talked about Chicago, you
16 indicated that the base station in Chicago was synonymous
17 with a macro cell site; is that correct?

18 A. Yes.

19 Q. Is the base station or base stations that AT&T
20 has in Pima County that are linked with NextG service also
21 macro cells?

22 MR. THOMPSON: Object to the form.

23 A. Well, we should clarify. When I use the term
24 "base station," I'm referring to the equipment.

25

1 radio services"?

2 A. I am.

3 Q. Do you have any understanding as to whether AT&T
4 is considered a commercial mobile radio service provider?

5 A. I believe so.

6 Q. If I use the acronym CMRS, do you associate that
7 with commercial mobile radio services?

8 A. Yes.

9 Q. Do you have any understanding as to how AT&T
10 operates its commercial mobile radio service in Pima County?

11 MR. THOMPSON: Object to form.

12 A. Can you clarify the question?

13 BY MR. ANDERSON:

14 Q. Sure. Do you have a -- if an AT&T customer with
15 a hand-held wireless phone wants to make or receive a
16 telephone call, do you have any understanding as to how the
17 signals would be transmitted back and forth from that
18 hand-held wireless device ultimately to the public switch
19 telephone network?

20 A. Generally, yes.

21 Q. Just give us your understanding from the point of
22 the signal leaving the hand-held wireless to the point of
23 reaching the public switch telephone network. In Pima
24 County we're talking about.

25 A. Sure. So the -- a radio signal -- you have the

1 phone, which the phone itself has processing and has a radio
2 in it, and the phone generates a radio frequency signal,
3 which propagates through the free space.

4 And in the case of Pima County, we have the NextG
5 nodes providing, you know, in a certain geographic area, and
6 so those nodes -- the radio frequencies that it propagates
7 is received by the NextG antenna, is converted by the
8 equipment on the pole to a fiber signal, converted to a
9 fiberoptic media, and that fiber media is used to transport
10 the RF signal back to what we call the base station hotel,
11 which is a piece of real estate where the fiber comes into
12 and it's connected to what we call some hub equipment, which
13 converts the signal back to a radio frequency signal, and
14 then that radio frequency signal is connected to the AT&T
15 base station, which receives those signals, processes them,
16 and ultimately interfaces and switches them or backhauls
17 them back to their switch location where they get back to
18 the PSTN.

19 Q. Okay. Are you familiar with an industry term
20 called "demarcation point"?

21 A. Yes.

22 Q. What is your understanding of what the term
23 "demarcation point" means?

24 MR. THOMPSON: Object to form.

25 A. It's a general term. The way I would define it

1 is it's a point at which the party responsible for the
2 signals changes.

3 BY MR. ANDERSON:

4 Q. Okay. In the scenario that you just described
5 regarding Pima County, from the wireless provider -- excuse
6 me -- the wireless customer of AT&T to the point it reaches
7 the AT&T switching equipment, is there any demarcation point
8 that you can identify?

9 A. Sure. So, I mean, there are two. There -- one
10 demarcation point is where -- because from the switch to the
11 base station is AT&T, and then, you know, between the base
12 station and the hub equipment is the demarcation point.
13 That's where the NextG service starts and stops. And then
14 the other demarcation point is the antenna on the pole.

15 Q. And what happens at the antenna on the pole where
16 the -- how is the signal handed off?

17 MR. THOMPSON: Object to form.

18 A. Can you clarify the question?

19 BY MR. ANDERSON:

20 Q. Sure.

21 A. "What happens," what do you mean by that?

22 Q. Let's go back. Let's take -- the scenario we
23 used is where the RF signal leaves initially from the AT&T
24 customer's wireless mobile device. Agreed?

25 A. Okay.

1 Q. In that scenario, that signal is received by a
2 NextG antenna; is that correct?

3 A. Correct.

4 Q. From the point of the customer's wireless device
5 to the antenna node, who has responsibility or control of
6 that signal?

7 A. AT&T.

8 Q. At some point does NextG -- excuse me. Strike
9 that.

10 At some point from there is the signal handed off
11 from AT&T to NextG?

12 A. Yes. The word "handed off" is a -- kind of a,
13 you know, shorthand term, but --

14 Q. Is there a more technical term?

15 A. To use the term you raised, I would say the
16 demarcation point is the antenna. That's where it -- that's
17 where the signal becomes NextG's responsibility.

18 Q. Is there a specific point in the antenna that is
19 called the demarcation point?

20 A. No.

21 Q. So at the point -- the demarcation point in the
22 antenna, what is the nature of the signal as between radio
23 frequency or fiberoptic?

24 A. Can you -- well, I'm not sure I understand the
25 question.

1 Q. The signal originates from the wireless device as
2 a radio frequency signal, correct?

3 A. Correct.

4 Q. And at some point in the process it becomes a
5 fiberoptic signal; is that correct?

6 A. Correct.

7 Q. Does the radio frequency signal get converted to
8 a fiberoptic signal before or after that first demarcation
9 point in the antenna?

10 A. After.

11 Q. At the point of hand-off or demarcation at the
12 antenna it still remains a radio frequency signal; is that
13 correct?

14 A. Yes. However, what happens with the antenna is
15 it goes from being a free space radio signal, something
16 propagating through the air, to an electrical radio
17 frequency signal, something that can be transported over
18 cables or fiber.

19 Q. Okay. At the demarcation point is it still a
20 radio frequency in free space or is it a radio frequency
21 electrical signal?

22 A. Well, on one side it's free space, and on the
23 other side it's electrical. That's why it's a demarcation
24 point.

25 Q. At the demarcation point it changes from a free

1 space RF to an electrical RF; is that correct?

2 A. Correct.

3 Q. And at that point, the signal is going from the
4 hand-held wireless to the antenna, it's converted to
5 electrical RF, and there's a hand-off that occurs from AT&T
6 to NextG; is that correct?

7 A. Correct.

8 MR. THOMPSON: Object to form.

9 BY MR. ANDERSON:

10 Q. Is it possible for the hand-off to occur -- from
11 AT&T to NextG to occur at a point further in the process
12 than that antenna?

13 MR. THOMPSON: Object to the form.

14 A. Not in the way we offer our service.

15 BY MR. ANDERSON:

16 Q. Okay.

17 A. I don't know if you're asking if something else
18 could be possible, but in our service, that's where the
19 demarcation is.

20 Q. In the example we talked about in Chicago where
21 Verizon -- you're hooked up with the fiberoptic to Verizon,
22 where is the demarcation point in terms of the antenna in
23 that service?

24 MR. THOMPSON: Object to the form.

25 A. So in that service we have nothing to do with the

1 A. Yes.

2 Q. And then from that point it travels to the
3 antenna; is that correct?

4 A. Yes.

5 Q. And is that through coaxial cable?

6 A. Yes.

7 Q. And at the antenna it's converted from electrical
8 RF to free space RF as you called it, correct?

9 A. Correct.

10 Q. And if I understand correctly, there's a
11 demarcation point in the antenna where NextG hands off the
12 signal to the carrier?

13 MR. THOMPSON: Objection to form.

14 A. I would say the demarcation point is the point at
15 which the electrical RF signals become free space RF
16 signals.

17 BY MR. ANDERSON:

18 Q. If the antenna was eliminated from the NextG
19 node, what would happen to the service?

20 A. We wouldn't -- the antenna is required to offer
21 the service that we provide.

22 Q. If AT&T were to so choose, could AT&T provide
23 their own antenna for the service?

24 MR. THOMPSON: Objection to form.

25 A. I'm sorry. Repeat the question.

1 BY MR. ANDERSON:

2 Q. If AT&T were to decide it wanted to provide its
3 own antenna rather than use NextG's, would that be
4 technically feasible?

5 MR. THOMPSON: Objection to form.

6 A. Technically feasible, yes. But that wouldn't --
7 that would then not fall into the category of service that
8 we provide.

9 It would also prevent us from serving other
10 wireless customers on that antenna, which is commercially
11 unattractive.

12 BY MR. ANDERSON:

13 Q. So if I understand correctly, it's technically
14 feasible but not practical from a business standpoint; is
15 that correct?

16 MR. THOMPSON: Objection to form.

17 A. I'm just saying that's not the service we
18 provide. A lot of things are technically feasible.

19 BY MR. ANDERSON:

20 Q. In the Chicago model that we talked about where
21 NextG just provides backhaul service, your understanding is
22 that Verizon has its own antenna; is that correct?

23 A. That's my understanding, yes.

24 Q. What are the -- in terms of technical terms,
25 other than who owns the equipment or controls the equipment,

1 what are the distinguishing characteristics between the Pima
2 County service NextG offers and the services in Chicago
3 that's offered?

4 MR. THOMPSON: Objection to form.

5 A. In my perspective, they're completely different.
6 In one case we're providing transport of data signals from a
7 base station to a switch. In another case we're providing
8 transport of radio frequency signals from a base station to
9 a demarcation point on a right-of-way pole.

10 BY MR. ANDERSON:

11 Q. What's the difference between a data signal and
12 an RF signal?

13 A. Generally, when people refer to data signals,
14 they're talking about ones and zeroes, on or off. A radio
15 frequency signal is a modulated wave that has data put onto
16 it.

17 Q. Is the data service -- do you have any knowledge
18 whether that's similar to information services?

19 MR. THOMPSON: Objection to form.

20 A. I don't know how you mean that term to be used.

21 BY MR. ANDERSON:

22 Q. Do you have any knowledge as to the federal
23 definition of information services?

24 A. I don't.

25 Q. In the Pima County model, would it be possible --

1 technically feasible -- strike that.

2 In the Pima County model, would it be technically
3 feasible for AT&T to have its own macro cell site connected
4 with the NextG transport service?

5 MR. THOMPSON: Objection to form.

6 A. I'm not sure I understand the question.

7 So I've described that system, right? Are you
8 asking if they could do something different from that?

9 BY MR. ANDERSON:

10 Q. Would it be possible -- instead of NextG having
11 the node at a street light pole, for example, would it be
12 possible for that to be an AT&T macro cell setting?

13 MR. THOMPSON: Objection to form.

14 A. I mean, AT&T builds macro sites routinely so --

15 BY MR. ANDERSON:

16 Q. Okay.

17 A. -- maybe. Potentially.

18 Q. Do you have any knowledge as to the functioning
19 of a typical AT&T macro cell site?

20 A. Generally, yes.

21 Q. Would the macro cell site have an antenna?

22 A. Yes.

23 Q. Would that antenna technically be a larger
24 antenna than a NextG node; is that correct?

25 A. Generally when people use the term "macro site,"

1 differences between a macro cell antenna and a micro cell
2 antenna, as it might be called, other than power?

3 MR. THOMPSON: Objection to form.

4 A. So would I say power, size, pattern, which you
5 mentioned. I would say those are the major differences.

6 BY MR. ANDERSON:

7 Q. The previous testimony that I've heard is that at
8 the NextG node, there's an electronics conversion box; is
9 that correct?

10 MR. THOMPSON: Objection to form.

11 A. Can you clarify what you mean by that?

12 BY MR. ANDERSON:

13 Q. No. Let me ask this a different way.

14 A. I'm not sure what that --

15 Q. Once the signal reaches the antenna from a
16 hand-held wireless, it's then converted from free space RF
17 to electrical RF, correct?

18 A. Correct.

19 Q. And then it goes to coaxial cable to another
20 device; is that correct?

21 A. Correct.

22 Q. What is the next device that that signal is
23 received by?

24 A. It's a device that takes the electrical RF signal
25 and puts it onto an optical carrier.

1 Q. Okay. And what is the name that you subscribe to
2 that device that changes it from the electrical RF to the
3 optical carrier?

4 A. We call it the remote unit. That's a NextG term,
5 though.

6 Q. Is there an industry term for that type of
7 equipment that you're aware of?

8 A. No. Different vendors call it different things.

9 Q. Okay. The remote unit that's present on NextG
10 node, is there -- could a macro cell site have that same
11 type of equipment as well?

12 A. No.

13 Q. Why couldn't the macro cell site have that type
14 of equipment?

15 A. Because functionally, a macro site, the way we're
16 talking about it, doesn't need the functionality of
17 converting electrical RF signals to optical signals.

18 Q. Do you have any understanding of why that's true?

19 A. I don't understand the question.

20 Q. You've indicated that functionally a macro cell
21 site doesn't need the technology that would be present in
22 the remote unit, as you called it; is that correct?

23 A. Right, correct.

24 Q. Could it feasibly be done from a technical
25 standpoint where a macro cell site had equipment

1 substantially similar to a remote unit?

2 MR. THOMPSON: Objection to form.

3 A. I mean, it's technically feasible. There
4 wouldn't be a good reason to do it.

5 BY MR. ANDERSON:

6 Q. Why would there not be a good reason to do it?

7 A. Because in a traditional micro site, you're not
8 -- the goal is to not transport the radio signals over a
9 long distance fiberoptic network.

10 Q. What is the goal -- is your understanding of the
11 goal of a macro site in terms of receiving and transmitting
12 RF signals?

13 A. Generally the RF signals are transmitted and
14 received in the same geographic location at which they're
15 generated, and in an RF transport service, the carrier
16 generates and receives the signals at the base station hotel
17 and then transported elsewhere.

18 Q. In the Chicago model that we discussed, you
19 indicated that Verizon has equipment at its base station
20 site that transmits a signal to NextG for further transport;
21 is that correct?

22 A. Well, it's a backhaul signal, not an RF signal,
23 in that case.

24 Q. What type of signal is NextG backhauling for
25 Verizon in the Chicago model?

1 A. An optical signal.

2 Q. And how does the RF signal that's received by the
3 Verizon antenna get changed to an optical signal for
4 transport by NextG?

5 A. That's done by the carrier base station.

6 Q. And is that equipment, to your knowledge, that's
7 used by the carrier base station to convert from RF
8 electrical to RF optical, is that similar equipment to the
9 remote unit that you've talked about for NextG service?

10 A. No.

11 Q. What's different about that equipment?

12 A. Okay. The base station not only generates and
13 receives the RF signals but is responsible for generating
14 the content that goes over those signals, handing mobile
15 users off to other cell sites, telling mobiles to power up
16 or power down. So all the kind of network intelligence as
17 it relates to the mobile signals is in the base station
18 whereas the remote unit is strictly a conversion device.

19 Q. But in the Chicago model at Verizon's base
20 station site, there are -- there's some type of equipment
21 that converts in some circumstances an RF signal to an
22 optical signal; is that correct?

23 A. It's correct, but it's an optical backhaul
24 signal. It's a signal from the base station to the switch.

25 Q. What's the difference between an optical backhaul

1 signal like that which NextG would carry in Chicago versus
2 the optical signal that NextG would carry in the Pima County
3 area?

4 A. In a backhaul scenario, the transport is data,
5 ones and zeroes, like we spoke about earlier. In an RF
6 transport scenario, what's being carried on the optical
7 light wave is the RF electrical signal.

8 Q. So is it then that the RF signal is still a radio
9 frequency even though it's carried in the form of a light
10 wave?

11 A. Correct.

12 Q. So if I understand correctly, then, throughout
13 NextG's distributed antenna system, it's already a frequency
14 signal; is that correct?

15 A. The RF transport service that we've spoken about
16 is all RF signals, that's right.

17 Q. So the distinction, if I understand correctly,
18 between the Chicago model and the Pima model is that in
19 Chicago, Verizon might convert the RF electrical signal to a
20 data optic signal, whereas in the NextG node in Pima County,
21 the RF electrical would just be changed to an RF optical
22 signal; is that correct?

23 A. That's correct.

24 MR. ANDERSON: I need to take a short break.
25 I'm sorry.

1 (Recess from 12:12 p.m. until 12:19 p.m.)

2 BY MR. ANDERSON:

3 Q. On the antennas in the NextG nodes in Pima
4 County, is the power of the antenna adjustable?

5 A. Yes.

6 Q. How is the power output adjusted, if desired?

7 A. There are several ways.

8 Q. Okay.

9 A. The most straightforward way is for the carrier,
10 in that case, AT&T, to change the power of their base
11 station.

12 Q. And in technical terms, how is the power of the
13 base station changed?

14 A. There's software in the base station that can --
15 by changing certain values, software values, that the gain
16 of the RF amplifiers in the base station can be adjusted.

17 Q. At the AT&T base station, does AT&T control the
18 signal at that point?

19 A. Yes.

20 Q. Are there any other ways that the power of the
21 antenna can be adjusted?

22 A. There are other ways that are possible, but
23 they're not typically done.

24 Q. What are the other possible ways it could be
25 done?

1 will be designed to pick up a phone call in that frequency
2 range; is that correct?

3 A. Correct.

4 Q. And let's just -- for the sake of argument, let's
5 just say that frequency is exactly 1900 megahertz. Does
6 that -- the frequency that that transmission is in, does
7 that change at any point during the process of going from
8 the wireless to the public switch telephone network?

9 A. So I think you're asking two questions. Let me
10 try to answer both.

11 So the 1900 megahertz signal that's in free
12 space, that gets transported through the NextG service back
13 to the base station hotel.

14 Q. Correct.

15 A. So during that transport, that frequency doesn't
16 change.

17 Now, the base station then takes that frequency,
18 converts it to a digital signal that then goes back to the
19 switch and back to the PSTN, so after the base station,
20 there's no more 1900 megahertz signal.

21 Q. Are you saying there's no frequency associated
22 with the signal at that point in time?

23 A. After the base station, that's right.

24 Now, the other thing I want to make sure is clear
25 is that the -- we're transporting whatever is there, right,

1 so the base station is what tells the mobile station what
2 channel to transmit on, and, in fact, even during a phone
3 call it may change, so it may be 1900, you know. Halfway
4 through your call it might change to 1901. So we transport
5 whatever it is.

6 Q. When the signal comes back from the public switch
7 telephone network, is it still in digital form with no
8 frequency attached?

9 A. Uh-huh, yes.

10 Q. And at some point before it's transmitted in the
11 antenna does it to have be reestablished in a frequency?

12 A. Right. So if you go that direction, PSTN and
13 data signals go to the AT&T base station, and then at that
14 point, they're -- the 1900 megahertz is generated and then
15 NextG transports it out.

16 Q. If a second customer is secured for a particular
17 node, is it necessary to install any additional antenna?

18 A. Typically, no. There are exceptions, but
19 typically, no.

20 Q. Does NextG have any customers that you're aware
21 of that aren't wireless phone providers?

22 MR. THOMPSON: Objection to form.

23 A. Not for our RF transport service.

24 BY MR. ANDERSON:

25 Q. Do you have customers for another form of service

1 that aren't wireless providers?

2 A. Yes. We've sold some of our fiber assets to
3 other telecommunication companies.

4 Q. Is that strictly in terms of backhaul service?

5 A. I wouldn't call it backhaul because a lot of
6 times the application is between enterprise customers, so
7 it's more -- it's more Ethernet service.

8 Q. Are you familiar with an industry term called
9 "dark fiber"?

10 A. Yes.

11 Q. What is your understanding of that term?

12 A. It's a term used where people either sell or
13 purchase the right to use a fiber asset, generally some
14 number of strands of fiber, for whatever purpose they want
15 to use it for.

16 Q. In the case of a dark fiber, is it -- strike
17 that.

18 Does NextG have any customers where it strictly
19 provides a dark fiber service?

20 A. Yes.

21 Q. What areas of the country do you provide that
22 service in?

23 A. As an example, Southern California.

24 Q. In the case of dark fiber service that NextG
25 provides, does NextG at any point in time have

1 responsibility or control over the signal?

2 A. No.

3 Q. Is that a characteristic of dark fiber service
4 where the dark fiber provider never assumes control over the
5 signal?

6 A. I would say that's true.

7 MR. ANDERSON: Let's mark this.

8 (Deposition Exhibit Number 6 was marked for
9 identification.)

10 BY MR. ANDERSON:

11 Q. I show you what's marked as Exhibit 6 to the
12 testimony here today, and if you would please tell me if you
13 recognize that document.

14 A. Not specifically, but I'm generally familiar with
15 this.

16 Q. Do you recognize this as a drawing of possible
17 NextG service that would be provided?

18 A. I do.

19 Q. Do you know if you had any participation in
20 creating this drawing?

21 A. I don't recall.

22 Q. Does the first page of the drawing, does that
23 depict a typical NextG node?

24 A. Yes, in a particular kind of installation.

25 Q. Are you able to identify where the antenna is on

1 this drawing, if any?

2 A. Yes.

3 Q. If you would, please, I'm going to give you a red
4 marker, and if you could just make an indication on Exhibit
5 6 where the antenna might be.

6 If you wouldn't mind, just write "antenna" and
7 draw an arrow to it anywhere in the margin that's
8 convenient.

9 A. Okay.

10 Q. Thank you.

11 On Exhibit 6 are you able to identify where the
12 remote unit as you referred to it would be?

13 A. Yes.

14 Q. Could you please circle where the remote unit
15 would be? In fact, I tell you what. Before you do that,
16 let me give you a green pen so we're color coordinated.

17 A. Okay.

18 Q. On that exhibit are you able to identify the area
19 where there would be a demarcation point between NextG and
20 its customer's service?

21 MR. THOMPSON: Objection to form.

22 A. It's not clearly shown on this drawing. It's a
23 construction drawing.

24 BY MR. ANDERSON:

25 Q. Is there a point where you would typically expect

19 SUSAN A. GRENZ
20 Certified Court Reporter
Certificate No. 50720

EXHIBIT 2

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SUPERIOR COURT OF ARIZONA

COUNTY OF MARICOPA

NEXTG NETWORKS OF CALIFORNIA,)
INC. d/b/a/ NEXTG NETWORKS WEST,)

Plaintiff,)

vs.)

CITY OF SCOTTSDALE,)

Defendant.)

No. CV 2010-000832

**DECLARATION OF JOSEPH
MILONE**

(Assigned to the Hon. George H. Foster)

I, Joseph Milone, declare as follows:

1. I am the Director of Government Relations for NextG Networks of California, Inc. ("NextG"). I make this Declaration in support of NextG's Reply in Support of its Motion for Summary Judgment and in Opposition to the City of Scottsdale's Cross Motion for Summary Judgment in the above captioned action. Unless otherwise indicated, I know the following of my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

2. The City of Scottsdale has submitted a copy of a declaration that I submitted in an action filed by NextG against the City of Carlsbad, California, and asserts that my

1 declaration in that case supports the City's contention that NextG provides "mobile" or
2 "wireless" service. Certainly, my declaration in the *Carlsbad* case does not support the
3 City's contention. However, to the extent that my declaration in *Carlsbad* is ambiguous
4 on the issue of whether NextG transmits radio frequency transmissions or controls the
5 transmission of radio frequencies (which was not at issue in *Carlsbad*), I make this
6 Declaration in order to clarify that NextG does not transmit or control radio frequencies.
7 As I made clear in my attached declaration on behalf of NextG in litigation involving the
8 City of Huntington Beach, California, NextG does not provide wireless service and does
9 not provide or control wireless transmissions. *See* Declaration of Joseph Milone in
10 Support of Plaintiff's Motion for Preliminary Injunction, *Nextg Networks of California,*
11 *Inc. v. City of Huntington Beach, California*, No. 8:07-cv-0147-AG-RNB at ¶¶ 11-12
12 (C.D.Cal. Jan. 7, 2008), attached hereto as Exhibit A. To the extent that my declaration in
13 the *Carlsbad* case is unclear and could be construed to suggest that NextG provides such
14 wireless transmissions, it was inaccurate and I clarify and correct it with this declaration.
15

16 I declare under penalty of perjury that the foregoing is true and correct.
17

18 Executed on November 16, 2010

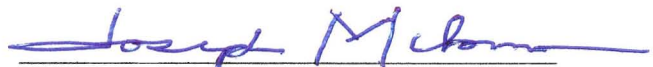

Joseph Milone

EXHIBIT 3

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

NEXTG NETWORKS OF CALIFORNIA,)
INC., d/b/a NEXTG NETWORKS)
WEST,)

Plaintiff,)

vs.)

CITY OF SCOTTSDALE,)

Defendant.)

No. CV2010-000832

THE DEPOSITION OF JOSEPH MILONE

Scottsdale, Arizona
September 21, 2011
8:53 a.m.

(ORIGINAL)
PREPARED FOR:

SUPERIOR COURT

REPORTED BY:

Marty Herder, CCR
Certified Court Reporter
CCR No. 50162

1 Q. Have you had your deposition taken before?

2 A. No.

3 Q. Have you testified in court before?

4 A. No.

5 Q. Let me go over some basic ground rules.

6 Hopefully, we'll make this proceeding go as
7 smoothly as possible today.

8 First rule is that the oath that you just took is
9 the same oath that you would take in a court of law, so the
10 testimony you give will be given the same weight even though
11 we're in an informal setting here today.

12 (Whereupon, Kevin Sonoda entered the room.)

13 Another thing to keep in mind is that the court
14 reporter will be taking down everything we say today.

15 As good as he is, he doesn't do well if we talk
16 over each other.

17 If you'll allow me to finish my question, even at
18 the expense of having to pause at the end, I'll try to
19 extend you the same courtesy of allowing you to answer.

20 Your attorney may from time to time have an
21 objection to the form of the question that I ask. In that
22 case, please allow him to make his objection, and then go
23 ahead and answer the question, if you're able.

24 In terms of the questions we're asking, I'm not
25 trying to trick you. We just want to get your best

1 testimony.

2 If at any time you don't understand a question
3 that I've asked, please ask me to rephrase it. I'll be glad
4 to rephrase it.

5 If you don't say anything, I'll assume that you
6 understood the question. Is that fair?

7 A. Yes.

8 Q. You're doing a good job so far.

9 It's important to remember to give audible
10 responses. Shakes of the head, nods, will not come out on a
11 written record.

12 So in the same token, uh-hmm, huh-uh, those kind
13 of things will not come out well in the record.

14 If you give clear auditory responses that will be
15 helpful to the record here.

16 Is there any reason that you wouldn't be able to
17 give your best testimony here today?

18 A. No.

19 Q. Have you reviewed any documents in preparation for
20 testimony today?

21 A. Yes.

22 Q. What did you review?

23 A. I've reviewed correspondence with the City.
24 E-mails with the City.

25 Q. Anything else that you can recall reviewing for

1 your deposition?

2 A. I have -- no, nothing else.

3 Q. What is the current job function of the Director
4 of Government Relations for the southwest region?

5 A. I represent NextG Networks in its dealings with
6 local jurisdictions in securing necessary approvals and
7 permissions to construct and operate our networks.

8 Q. What area comprises the southwest region?

9 A. That would be from Louisiana, Texas, west to the
10 southern portion of California, including Arizona and
11 Nevada.

12 Q. What is the highest level of education you've
13 completed?

14 A. Bachelor of Science degree.

15 Q. And what is your degree in?

16 A. Architecture and City Planning.

17 Q. Has your job duties as Director of Government
18 Relations changed at any time in the last seven years?

19 A. No.

20 Q. Where did you get your degree from?

21 A. California Polytechnic State University,
22 California, Pomona, California.

23 Q. Is it Cal Poly?

24 A. Yes.

25 Q. At Cal Poly did you have any special coursework in

1 relation to telecommunications?

2 A. No.

3 Q. Do you have any special education in relation to
4 telecommunications?

5 A. Work experience.

6 Q. Did you work in the industry prior to joining
7 NextG?

8 A. Yes.

9 Q. Where did you work prior to NextG?

10 A. I worked for MetroCom Incorporated, and Next
11 Telecommunications.

12 Q. Which company immediately preceded NextG Networks?

13 A. MetroCom Incorporated.

14 Q. And what was your position with MetroCom?

15 A. Also Director of Government Relations.

16 Q. And how about -- is it NexTell? Is that the next
17 job?

18 A. NexTell.

19 Q. And what was your position there?

20 A. Zoning Manager.

21 Q. How long were you with NexTell?

22 A. Four years.

23 Q. And, generally, what were your duties as Zoning
24 Manager of NexTell?

25 A. Securing the necessary entitlements, zoning

1 conditional use permits, special use permits for the
2 wireless, what they call macro telecommunications.

3 Q. For the record purposes, when you say macro sites
4 what generally do you mean?

5 A. In the industry macro is the traditional cell
6 towers, usually self-support structures with multiple
7 antenna raised on top.

8 Q. Were your job functions as Director of Government
9 Relations with MetroCom similar to those with NextG?

10 A. Yes.

11 Q. Other than your industry experience, do you have
12 any kind of specialized coursework or seminars or anything
13 related to telecommunications?

14 A. Over the years I have taken several.

15 Q. What, if any, do you recall specifically?

16 A. Just a couple of industry trade group seminars,
17 and exhibits. California League of Cities.

18 Q. Other than your Bachelor of Science with Cal Poly,
19 do you have any other higher education degrees?

20 A. I commenced studies on a Master's of Business
21 Administration at Pepperdine University, and did not
22 complete that.

23 Q. How long were you in the program at Pepperdine?

24 A. One year.

25 Q. Did you have any special coursework at Pepperdine

1 in relation to the telecommunications industry?

2 A. No.

3 Q. Are you familiar with the services that NextG
4 provides to its customers?

5 A. Yes.

6 Q. What is your understanding of the services that
7 NextG offers to customers?

8 A. NextG provides RF transport telecommunications
9 services to our customers. And that's over a fiberoptic
10 network backhaul system.

11 Q. You use the term backhaul, what is your
12 understanding of that term as it's used in the industry?

13 A. It transports a signal from one point to another.

14 Q. Other than RF transport telecommunications
15 services, are you aware of any other telecommunications
16 service that NextG offers?

17 A. No.

18 Q. The term RF transport telecommunications services,
19 do you consider that synonymous with backhaul services?

20 A. I don't have -- I don't know if I understand that
21 question.

22 Q. Okay.

23 You've used two terms here today, and they're kind
24 of industry terms; is that correct, backhaul and RF
25 transport services?

1 MR. THOMPSON: Object to the form.

2 MR. ANDERSON: Let me rephrase that.

3 You've referred to a term RF transport services;
4 is that correct?

5 A. Yes.

6 MR. THOMPSON: I was going to say object to the
7 form, but. . .

8 BY MR. ANDERSON:

9 Q. That's fine.

10 Let me clarify.

11 I think the term you used was RF transport
12 telecommunications services; is that accurate?

13 A. Yes.

14 Q. And then you used another term backhaul services,
15 correct?

16 A. Yes.

17 Q. As you use those terms, is there any distinction
18 between backhaul services and RF transport
19 telecommunications services?

20 A. I don't know.

21 Q. Is there somebody else in the company you rely on
22 for more full -- fuller definition of those services?

23 A. Yes.

24 Q. And who's that?

25 A. That's our Chief Technology Officer, David Cutrer.

1 Q. The term RF, is that an abbreviation?

2 A. Yes.

3 Q. Is that radio frequency?

4 A. Yes.

5 Q. Have you had any involvement with marketing of
6 NextG services?

7 A. No.

8 Q. Have you had involvement with obtaining any
9 government permits or licenses on behalf of NextG?

10 A. Yes.

11 Q. Do you have any employees that work under your
12 supervision?

13 A. Yes.

14 Q. And who are those employees?

15 A. Raphael Nunez, title is Manager of Government
16 Relations. That's for Southern California.

17 Sharon James.

18 Q. And what are their titles?

19 A. Again, Raphael Nunez was the Manager of Government
20 Relations, Sharon James is a Director.

21 Q. Is there a difference between a Director and a
22 Manager?

23 A. Yes.

24 Q. What's the difference between those two positions?

25 A. Just in terms of the hierarchy of experience and

1 A. Correct.

2 Q. And at the antenna the RF signal is re-transmitted
3 wireless to a mobile user device; is that correct?

4 MR. THOMPSON: Objection to form.

5 THE WITNESS: Yes.

6 BY MR. ANDERSON:

7 Q. And do you have any understanding of whether NextG
8 sells any hand-held mobile phone devices?

9 A. We do not.

10 Q. So that's not part of NextG's business, correct?

11 A. Correct.

12 Q. The antenna that is used to transmit the signal to
13 the mobile user device, do you know who owns that antenna?

14 MR. THOMPSON: Objection; form. Go ahead.

15 THE WITNESS: It depends.

16 BY MR. ANDERSON:

17 Q. So it can vary. Is that a matter of contract
18 between NextG and NextG's customer?

19 A. That's my understanding.

20 Q. As part of your function as the Director of
21 Government Relations, is it sometimes your duty to obtain
22 permits for installation of antennas in governmental
23 right-of-ways?

24 A. Yes.

25 Q. And are you doing that on behalf of NextG

1 Networks?

2 A. Yes.

3 Q. And are you aware of any situations where you
4 obtained a permit to install an antenna in a governmental
5 right-of-way on behalf of NextG networks?

6 A. Yes.

7 Q. And was it your understanding for those times that
8 NextG was going to be the owner of that antenna?

9 A. I don't recall.

10 I've done many of them.

11 Q. Is there somebody else in the company that's more
12 familiar with that process?

13 A. Yes. Again, that would be our Chief Technology
14 Officer, or our VP of Sales.

15 Q. And who is your VP of Sales?

16 A. Larry Doherty.

17 Q. Do you have any specialized legal training?

18 A. No.

19 Q. To your knowledge, are the services NextG offers
20 customers in Arizona any different than services offered in
21 other states by NextG In the southwest region?

22 A. No.

23 Q. Are you familiar with the term distributed antenna
24 system?

25 A. Yes.

1 Q. What is your understanding of what comprises a
2 distributed antenna system?

3 A. The -- say the question again, please.

4 Q. What is your understanding of what services are
5 comprise a distributed --

6 Let me strike that and go back.

7 What is your understanding of what makes up a
8 distributed antenna system?

9 A. That would be very similar to NextG, that is
10 NextG.

11 Q. Okay.

12 So we've talked about antennas; is that correct?

13 A. Yes.

14 Q. And we've talked about electronics box at the
15 node; is that correct?

16 A. Correct.

17 Q. And we've also talked about a base station; is
18 that correct?

19 A. Correct.

20 Q. And I think you made a reference to fiberoptic
21 cable; is that correct?

22 A. Correct.

23 Q. Is there any other -- is all that equipment
24 included as part of a distributed antenna system?

25 A. For NextG, yes. We use fiberoptic as our

C. Martin Herder, CCR
Certified Court Reporter
Certificate No. 50162